Supreme Court, U. S.
FILED
AUG 8 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-39

LAWRENCE MARQUETTE, MIDWESTERN FARM LINES, INC. AND HARVEST MOON FARM LINES, INC.
Petitioners,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA NATIONAL COUNCIL OF FARMER COOPERATIVES AMERICAN TRUCKING ASSOCIATIONS, INC. COMMITTEE ON TRANSPORTATION PRACTICES, INC. TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS WESTERN RAILROAD TRAFFIC ASSOCIATION SOUTHERN FREIGHT ASSOCIATION ASSOCIATION OF AMERICAN RAILROADS IN OPPOSITION

[Attorneys listed on inside cover]

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

RICHARD H. STREETER
WHEELER & WHEELER
1729 H Street, N.W.
Washington, D.C. 20006

DONALD E. GRAHAM
JAMES S. KRZYMINSKI
NATIONAL COUNCIL OF FARMER COOPERATIVES
Suite 604
1800 Massachusetts Ave., N.W.
Washington, D.C. 20006

JOHN R. BAGILEO
REA, CROSS & AUCHINLOSS
918 16th Street, N.W.
Washington, D.C. 20006

NELSON J. COONEY
1616 P Street, N.W.
Washington, D.C. 20036

FRITZ R. KAHN
VERNER, LIIPFERT, BERNHARD AND MCPHERSON
Suite 1000
1660 L Street, N.W.
Washington, D.C. 20036

Attorneys for Respondents in Opposition

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OPINIONS BELOW

The memorandum opinion of the court of appeals (Pet. App. 3a-5a) is unreported. The Decisions of the Interstate Commerce Commission (Pet. App. B and C 6a-85a) are not reported.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1254.

QUESTION PRESENTED

Whether revised regulations of the Interstate Commerce Commission implementing the agricultural cooperative exemption of the Interstate Commerce Act are valid.

STATEMENT

Following enactment of amendments to the agricultural cooperative exemption of the Interstate Commerce Act, the Interstate Commerce Commission in 1969 prescribed regulations governing the operations of motor vehicles controlled and operated by agricultural cooperatives. In late 1976 the Commission, realizing that its regulations had not had the contemplated effect of preventing unlawful motor carrier operations and solicitations by "sham" agricultural cooperatives, instituted a further rulemaking proceeding. The stated purposes for the instant rulemaking were (1) to define more clearly the exemption from regulation accorded motor vehicles controlled and operated by agricultural cooperatives or federations thereof and (2) to formulate new and revised requirements concerning record keeping and notice to the ICC with respect to certain transportation provided by agricultural cooperatives (Pet. App. 8a).

In its initial report (Pet. App. 6a-63a), the Commission analyzed the relevant legislative history of both the

Agricultural Marketing Act and the agricultural cooperative exemption of the Interstate Commerce Act (Pet. App. 10a-15a), and the submissions of the parties (Pet. App. 15a-19a). As here pertinent, the Commission adopted two regulations which (a) expressly prohibited one-way trip-leasing of vehicles to agricultural cooperatives for nonmember-nonfarm transportation (Pet. App. 42a-46a); and (b) required the agricultural cooperatives to maintain information that would permit verification of tonnage and revenue limitations imposed by the Interstate Commerce Act (Pet. App. 46a-56a).

Following the filing of petitions seeking administrative review, the Commission issued its decision on reconsideration (Pet. App. 64a-87a). In its decision the Commission focused on the prohibition against one-way trip-leasing and the need for record keeping requirements. As summarized by the Commission, the object of the statutory exemption permitting agricultural cooperatives to transport a limited amount of nonmember, non-farm traffic without authority "is merely to enable them to round out their transportation operation utilizing the same power equipment employed in their primary transportation movements in the opposite direction" (Pet. App. 71a). The Commission also reasoned (*id.*) that since a one-way trip-lease "does not involve the use of the same vehicle on both the outbound and inbound movements, and will not offset a loss otherwise encountered by equipment participating in an outbound member move," it cannot qualify as being "incidental and necessary" within the meaning of the statutory exemption.

After noting that Congress specifically and intentionally placed limits on the type and amount of traffic which qualifies for the agricultural cooperative exemption, the Commission concluded (Pet. App. 76a) that its proposed rule "is a necessary complement to the Commission's inspection powers over cooperative transportation records."

As the Commission further reasoned, "without the authority to prescribe the keeping of such information the investigatory powers to determine compliance have little practical value" (Pet. App. 77a).

On a petition to review these rules, the court of appeals held that "the explicit prohibition of one-way trip-leased movements is a rational exercise of the Commission's rulemaking authority and is fully consistent with Congressional intent" (Pet. App. 4a). The court of appeals also upheld the record keeping requirements which it found to be needed if the Commission is to fulfill its statutory responsibilities to enforce the statutory tonnage limitations.

ARGUMENT

The decision of the court below is correct, and does not conflict with any decision of this Court or any other court of appeals. Accordingly, further review is not warranted.

1. Petitioners' basic contention is that the Interstate Commerce Commission, through the exercise of its rulemaking powers, has encroached on statutorily exempt transportation services of agricultural cooperatives (Pet. 5). The relevant legislative history of the 1968 amendments to the agricultural cooperative exemption contained in section 203(b)(5) of the Interstate Commerce Act (49 U.S.C. 303(b)(5)[1] repudiates this contention.[2]

In revising its regulations implementing the agricultural cooperative exemption, the Commission merely clarified the scope of the exemption afforded nonmember, non-

[1] This provision has been recodified without substantive changes at 49 U.S.C. § 10526(a)(5).

[2] Although raised in a different context, the relationship between the two remedial statutes, the Interstate Commerce Act and the Agricultural Marketing Act, said by the petitioners to require exploration, was considered by this Court in *Bray Lines, Inc.* v. *United States*, 353 F. Supp. 1240, 1242-44 (W.D. Okla. 1973), aff'd mem., 414 U.S. 802, 94 S.Ct. 59.

farm transportation and confined such transportation to that which is incidental to a cooperative's primary transportation operation and necessary for its effective performance. As recognized by the lower court (Pet. App. 3a) the Commission's actions in this respect are supported by relevant legislative history which makes clear the Congressional intent to exempt only that nonmember, nonfarm transportation which satisfied the "incidental and necessary" test described in *Northwest Agricultural Cooperative Association, Inc. v. Interstate Commerce Commission*, 350, F.2d 252 (9th Cir.), *cert. denied*, 382 U.S. 1011. As there defined, transportation of nonfarm products and supplies was incidental "because limited to otherwise empty trucks returning from hauling member farm products to market" and necessary "because it is not economically feasible to operate the trucks empty on return trips". As recognized by the Commission (Pet. App. 70a-71a), a one-way trip-lease involves vehicles leased from another entity and by definition, "does not involve use of the same vehicle on both the outbound and inbound movements and will not offset a loss otherwise encountered by equipment participating in an outbound member move." Hence such movements, by definition, cannot satisfy the "incidental and necessary" standard.[3]

2. Nor is there merit to petitioners' contention that the Commission's revised notice and record keeping requirements exceed the Commission's statutory authority. After noting the mandate in section 203(b)(5) that any cooperative performing interstate transportation for non-

[3] Economic benefit alone will not meet the "incidental and necessary" test. *See I.C.C.* v. *Milk Producers Marketing Company*, 405 F. 2d 639, 641-642 (10th Cir. 1969); *see also, Munitions Carriers Conference, Inc.* v. *American Farm Lines*, 415 F. 2d 747, 750 (10th Cir. 1969). Petitioners' strained argument that one-way trip-leasing by an agricultural cooperative satisfies the "incidental and necessary" standard because the practice inures to the benefit of the cooperative, is without merit.

members "shall notify the Commission of its intent to perform such transportation prior to the commencement thereof" (Pet. App. 4a), the lower court found the regulations are not overly burdensome and are reasonably designed to provide the Commission with necessary information.[4] The lower court further upheld the Commission's record keeping requirements when it found them to be needed "if the Commission is to fulfill its statutory responsibility to enforce the tonnage limitations" (Pet. App. 4a) that are contained in the agricultural cooperative exemption.

The Commission's regulations, which are consistent with the provisions of the Interstate Commerce Act and necessary to permit the Commission to discharge its duties thereunder, are rational in all respects. The lower court correctly affirmed them. See *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, —— U.S. ——, 98 S.Ct. 1197, 1211.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

RICHARD H. STREETER
JAMES S. KRZYMINSKI
JOHN R. BAGILEO
NELSON J. COONEY
FRITZ R. KAHN

[4] The reasonableness of the revised notice regulations is borne out by the fact that legitimate agricultural cooperatives have complied with the rules without any undue burden. *See*, e.g., notices to the Commission of intent to perform nonmember, nonexempt, interstate transportation at 44 Fed. Reg. 41, 981-41, 982 (1979).